

DISSENTING OPINION OF JUDGE IGNACIO-PINTO

[*Translation*]

I am opposed to the Order made this day by the Court, granting New Zealand the same interim measures of protection as were granted Australia a few hours before on this same date, in the latter's case against France.

My opposition to the present Order is based on the same considerations as I have already expounded at length in my dissenting opinion in the first *Nuclear Tests* case (*Australia v. France*). I am therefore voting against it as I voted against the first Order, in the case of *Australia v. France*.

But before going farther, I venture to observe that the Court ought from the beginning to have pronounced a joinder of the two cases, as some judges had moreover requested.

For in fact, in the two requests for interim measures presented by the two States, Australia and New Zealand, there is more than a mere analogy between the two claims. They have indeed the same object, namely *to secure from the Court an indication that "the French Government should avoid nuclear tests causing the deposit of radio-active fall-out" on the territory* (emphasis added):

- (1) of Australia;
- (2) of New Zealand, the Cook Islands, Niue or the Tokelau Islands.

There is therefore identity as to the object of the claim; the litigant cited as respondent, France, is also identical; finally there is, as nearly as makes no difference, an identity in the terms employed in the requests.

That being so, I think that there was every reason to order a joinder and to pronounce upon the two States' requests for the indication of interim measures in one and the same Order.

For that reason I am also voting against the Order made today by the Court in respect of the New Zealand request, and for the rest of the arguments I would adduce in support of my dissenting opinion in the present case, I will confine myself to referring to those I have already put forward in the case of *Australia v. France*.

But I wish to take this opportunity of modifying somewhat, in regard to New Zealand, what I said about the nuclear tests carried out by the United Kingdom at Maralinga in Australia in the years 1952-1957.

The same reasoning that I followed in order to deny that Australia was entitled to put forward its claims is likewise valid where New Zealand is

concerned. It is also necessary to refer in this connection to the tests carried out by the United Kingdom at Christmas Island—thermonuclear explosions, what is more—at a distance of 1,200 miles from the Tokelau Islands, under New Zealand administration.

If therefore New Zealand considered that the United Kingdom was acting acceptably in carrying out tests at Christmas Island, it is not entitled to request that the French Government be prevented from exploding nuclear devices at a site some 1,400 miles from New Zealand.

And so far as the effects of radio-activity are concerned—a subject on which there is such eagerness to sensitize public opinion—, it is interesting to note the following passage, taken from page 18 of *New Zealand and Nuclear Testing in the Pacific* by Nigel S. Roberts, Lecturer in Political Science, University of Canterbury, a work published at Wellington in 1972 by the Institute of International Affairs, of which Mr. Allan Martyn Finlay, Attorney-General of New Zealand and counsel for his country in the present case, is the Vice-President:

“Before French testing began, a special report was presented to the Prime Minister and then to the House of Representatives in an attempt to assess the health hazards to New Zealand, as well as to other Pacific areas, from the proposed French tests of nuclear weapons. The report concluded that:

‘Testing of nuclear weapons up to the present time does not and will not present a significant health hazard to the people of New Zealand or the Pacific Territories with which it is associated. The proposed French tests will add *fractionally but not significantly* to the long-lived fall-out in these areas. The general levels of such radio-active contamination in the Southern hemisphere will remain *below those* already existing in the Northern hemisphere. . . . For New Zealand the chance of significant levels of contamination being reached is *even more unlikely* than for the islands in the Pacific.’ ” (Emphasis added.)

If that could be the unequivocal opinion of the experts in an undisputed official report addressed to the New Zealand Prime Minister and House of Representatives, that confirms my conviction that this second *Nuclear Tests* case is also political in character. Hence I remain strongly opposed to the Order indicating the interim measures requested by New Zealand. In making it, the Court has exceeded its competence and it should have rejected that request.

(Signed) L. IGNACIO-PINTO.